

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**JUL 26 2006**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

TIMOTHY LEON WHITFIELD,

Petitioner - Appellant,

v.

JOE MCGRATH, Warden,

Respondent - Appellee.

No. 05-15353

D.C. No. CV-02-05685-DLB

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Dennis L. Beck, Magistrate Judge, Presiding

Submitted July 24, 2006\*\*  
San Francisco, California

Before: SILVERMAN and RAWLINSON, Circuit Judges, and BERTELSMAN,\*\*\*  
Senior District Judge.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable William O. Bertelsman, Senior United States District Judge for the Eastern District of Kentucky, sitting by designation.

1. Assuming *arguendo* that prosecutorial vouching occurred, it did not “so infect the trial with unfairness as to make the resulting conviction a denial of due process.” *Davis v. Woodford*, 384 F.3d 628, 644 (9th Cir. 2004), *as amended* (citation and alteration omitted), *cert. dismissed*, 126 S. Ct. 410 (2005).

Accordingly, the California Court of Appeal’s denial of this claim was not “contrary to, or . . . an unreasonable application of, clearly established federal law, as determined by the Supreme Court . . .” *Id.* at 637.

2. We deny Whitfield’s request to expand the certificate of appealability (COA) because Whitfield has failed to make “a substantial showing of the denial of a constitutional right.” *Pham v. Terhune*, 400 F.3d 740, 742 (9th Cir. 2005) (*per curiam*) (citation omitted).

**AFFIRMED**; the request to expand the COA to include the uncertified issues is **DENIED**.